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CLEARINGHOUSE RULE 00-106

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 480.01 (4), Stats., defines “auctioneer,” and s. 480.08 (1) (a), Stats., prohibits a person from acting as an auctioneer unless the person is registered. This means that a person may not engage in, or advertise or otherwise hold himself or herself out as being able to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction unless the person is registered as an auctioneer.

Similarly, s. 480.01 (2), Stats., defines “auction company,” and s. 480.08 (1) (b), Stats., prohibits a person from acting as an auction company unless the person is registered. This means that a person may not manage an auction or have primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received by an auctioneer, the person’s principal or any other person at or as a result of an auction unless the person is registered as an auction company or auctioneer.

Nothing in ch. 480, Stats., gives the Department of Regulation and Licensing (DRL) authority to regulate other activities that a person may choose to engage in. For example, ch. 480 does not give DRL authority to regulate a person who simply works at an auction helping to set up merchandise displays before the auction or packing up after the auction because the person need not be registered. Because DRL does not have statutory authority to prohibit a person from doing something which any person could do without being registered, it appears that there is no statutory authority for portions of s. RL 126.03 (2) (e) which prohibit an auctioneer or auction company whose registration has been suspended or revoked from engaging

in certain activities. In particular, it appears that any person may engage in the activities specified in s. RL 126.03 (2) (e) 2. and 5. without being registered; therefore, it appears that DRL is without authority to prohibit even a person whose registration has been revoked or suspended from engaging in those activities.

Moreover, it appears that any person may engage in the activities in s. RL 126.03 (2) (e) 1. *for auctions under s. 480.02 (2) (a) to (h), Stats.*, without being registered because ch. 480, Stats., does not apply to the situations described in s. 480.02 (2) (a) to (h), Stats. (or to the activities described in s. 480.02 (i) and (j), Stats., for that matter). Therefore, it appears that DRL is without authority to prohibit even a person whose registration has been revoked or suspended from engaging in the activities in s. RL 126.03 (2) (e) 1. with respect to the auctions specified in s. 480.02 (2) (a) to (h), Stats.

2. Form, Style and Placement in Administrative Code

Section 480.06 (1), Stats., provides that before submitting the rule to the Legislative Council Rules Clearinghouse, DRL must submit the proposed rule to the Auctioneer Board. Neither the analysis nor transmittal materials indicate that this was done. The materials submitted to the Legislature should include a statement of compliance with this statutory requirement.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis indicates that a temporary registration certificate is valid for 60 days. In contrast, s. RL 121.025 indicates that a temporary registration certificate is valid for *no more than* 60 days after the date that the applicant filed the application. These statements are not consistent for two reasons. First, the analysis suggests that the 60 days run from the date the certificate is issued, but s. RL 121.025 indicates that the 60 days run from the date of application. Unless DRL always issues a certificate the same day an application is received, there is a distinction between the two statements which should be clarified. Second, “60 days” is not the equivalent of “no more than 60 days.” If the intent is that the temporary registration certificate be valid for 60 days or until the examination results are received, whichever is earlier, this should be stated in the rule.

Also, it appears that the only distinction between a temporary certificate and a certificate is that the person has not passed the auctioneer examination. Section 480.10 (1), Stats., requires that DRL give the examination at least semiannually. Unless DRL gives it more frequently, it appears that, in most cases, a 60-day license will expire before the person is able to take the examination and get the results. Does DRL give the examination more frequently than every six months? If not, was the 60-day limit on the temporary certification intended or can the temporary certificate be renewed?

b. In s. RL 126.03 (2) (c), a quotation mark should be inserted before the phrase “auction sales staff.”

c. In s. RL 126.03 (2) (e) 4., the meaning of “auctioneer-related professional” is unclear. In subd. 5., the second instance of “bid calling” should be hyphenated.